Balwant Singh with regard to section 15(1). In addition he submitted that the directions of the learned trial judge as to corroboration were inadequate. We have perused the summing-up by the judge with the greatest care and in our opinion, his directions were impeccable. In any event, the evidence against them was overwhelming, apart from their own admissions which helped them not at all. Their appeals were accordingly dismissed and the conviction affirmed.

As to the last appellant, Miss Saraswathi Devi argued that, at most, the prosecution evidence only raised suspicion against this appellant, which was insufficient to warrant a conviction. We were satisfied that there was no substance in this submission. What we considered the most damaging evidence against this appellant was that, when the elder brother returned and found Chee Theng missing, the appellant invented a false reason for the boy's disappearance. We considered his guilt also established beyond reasonable doubt and therefore dismissed his appeal and affirmed the conviction.

In conclusion, we feel that we should highly commend the police officers concerned for a very smart and efficient piece of work which compels admiration.

Appeals dismissed.

Solicitors: *Balwant Singh & Co.; S. Seenivasagam & Sons; Kamala Devi & Co.*

PHANG SWEE KIM v. BEH I HOCK

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 1, 1964]

[Ipoh — Federal Court Civil Appeal No. 32 of 1964]

Land Laws — Sale — Memorandum of transfer made during Japanese occupation not registered — Death of purchaser — Widow remaining in possession as administratrix — Subsequent agreement by vendor to effect transfer after subdivision for consideration — Whether consideration adequate — Failure to transfer — Whether administratrix entitled to declaration.

Contract — Consideration — Adequacy of — Contracts (Malay States) Ordinance, 1950, ss. 2(d) and 26 Explanation 2.

In 1944 by a memorandum of transfer and in consideration of $20,000 in Japanese currency, the respondent transferred his half share of the land in question to the appellant's husband, now deceased. The transfer was not registered but the deceased obtained possession of the land, and in 1946 he died intestate. The appellant, the widow of the deceased extracted grant of letters of administration in 1951 and she continued to be in possession. Sometime in 1963 the land was sub-divided into two lots and the respondent became the sole proprietor of the lot occupied by the appellant. Subsequently on January 21, 1963 the respondent's solicitors notified the appellant that she had trespassed on the said land and asked for vacant possession and also for an account of all income received by her from the land. In May 1963 the respondent instituted an action against her claiming the relief stated. The appellant counterclaimed for a declaration that she was entitled to the said land.

At the hearing in the court below the appellant contended that the basis of her claim was an oral agreement made between her and the respondant in 1958. The learned trial judge accepted her evidence, but held that the agreement was void due to inadequacy of consideration. The appellant appealed and the respondent cross-appealed.

Held: there was adequate consideration in the case (there being no evidence of fraud or duress) because the respondent agreed to transfer the land to the appellant on payment of $500 when the land was sub-divided. The appellant was therefore entitled to the declaration sought by her.

Cases referred to:—

(1) *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227.

(2) *The Alliance Bank Ltd.* v. *Broom* 62 E.R. 631.

(3) *Kedari Bin Ranu* v. *Atmarambhat* (1866) B.H.C.A.C. 11, 18, 19.

FEDERAL COURT.

P. P. Dharmananda for the appellant.

E. K. Yeap (Miss Yeap with him) for the respondent.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): The defendant, who is the appellant in this appeal, is the administratrix of the estate of her husband, Khoo Hock Lim, deceased. She alleged that prior to his death he obtained possession of part of a piece of land held under Grant for Land No: 18534 for Lots Nos: 3486, 3491 and 3492 in the Mukim of Lumut, District of Dindings, from the plaintiff, now the respondent. This said land was registered in the names of the respondent and his brother, Beh I Siew, in equal undivided shares. By a memorandum of transfer executed on the 20th of December, 1944, that is during the Japanese occupation, in consideration of the sum of $20,000 in Japanese currency the respondent transferred his interest in the said land to the appellant's husband, Khoo Hock Lim, who died intestate on the 13th of February, 1946, without registering the transfer in the Land Office. The appellant extracted grant of letters of administration on 22nd of December, 1951. The appellant continued in possession of the said land.

Some time in 1963, the land was sub-divided and Certificates of Titles Nos: 22367 and 22368 for Lots 4011 and 4022 were issued in place of the old title. The respondent then became the sole proprietor of the land under Certificate of Title No: 22367 Lot No: 4011. The appellant continued in possession of this portion of the land under Certificate of Title No: 22367 until receipt of a letter from the respondent's solicitors dated the 21st of January, 1963, notifying her that she had trespassed on the land and asking for vacant possession and also for an account of all income received by her from the land. In

May, 1963, the respondent instituted an action against her claiming the relief stated above.

In her statement of defence the appellant stated *inter alia*:—

"the plaintiff by reason of some family disagreement left Lumut where he had resided for a number of years and went to reside in Penang; some time in 1958 the defendant went to Penang, got in touch with the plaintiff and requested the plaintiff to execute a memorandum of transfer in respect of the said land in favour of the defendant as representative of the estate of the deceased; the plaintiff told the defendant that subdivision of the former land was being effected and agreed to execute a memorandum of transfer of the said land in favour of the defendant as such representative upon issue of the separate issue documents of title provided that the defendant as such representative paid to the plaintiff some compensation which the defendant agreed to do",

and counterclaimed for a declaration that she was entitled to the said land. In his reply to the defence and counterclaim the respondent admitted the transaction which took place during the Japanese occupation but averred that it did not pass any interest to her. He further pleaded that it was barred by limitation.

At the hearing appellant conceded to the plea of limitation regarding the transaction which took place during the Japanese occupation but submitted that the real basis of her claim was an oral agreement made between her and the respondent sometime in 1958 in Penang.

In his judgment the learned trial judge accepted her evidence stating:—

"Taking the evidence as a whole, I feel inclined, on the balance of probabilities, to accept the defendant's evidence that there was such a meeting at Mr. Teh Boon Chin's house as alleged and that the plaintiff had promised the defendant in the way stated."

but gave judgment for the respondent because of inadequate consideration. Against this judgment she now appeals. There is also a cross-appeal by the respondent.

At the hearing it was agreed by both counsel for the parties that the issue before the court was whether there was a legally binding agreement between the appellant and the respondent which would entitle the appellant to the declaration sought in her counterclaim.

Mr. Yeap submitted that there was no agreement between the parties in 1958 and that the sum of $500 offered by the appellant was by way of compensation and not consideration for the agreement. In his judgment the learned trial judge accepted the appellant's evidence as stated above but held that the agreement was void due to inadequacy of consideration.

In my view there was consideration. Section 2(d) of the Contracts (Malay States) Ordinance, 1950, defines "consideration" as follows:—

"when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or absistence or promise is called a consideration for the promise;"

The respondent agreed to transfer the land to her on payment of $500 when the land was sub-divided and in consequence she took no further action in the matter until receipt of letter (Exhibit D. 2J) from respondent's solicitors in January, 1963. In her evidence she said:—

"I am ready and willing to pay $500 if transfer is made to me. If plaintiff had refused to transfer land to me in 1958 I would have gone to my solicitor to take action."

In the case of *Robertson* v. *Minister of Pensions* [1] the headnote reads:—

"The appellant, a serving army officer, wrote to the War Office regarding a disability of his and received a reply, dated April 8, 1941, stating: 'Your disability has been accepted as attributable to military service." Relying on that assurance he forebore to obtain an independent medical opinion on his own behalf. The Minister of Pensions later decided that the appellant's disability was not attributable to war service.

Held: (i) that as between subjects such an assurance would be enforceable because it was intended to be binding, intended to be acted upon, and was in fact acted upon; (ii) that the assurance was binding on the Crown because no term could be implied that the Crown was at liberty to revoke it; and (iii) that the assurance was therefore binding on the Minister of Pensions, the appellant having become entitled to assume that the War Office had consulted any other department concerned before it gave the assurance."

Also see the case of *The Alliance Bank (Ltd.)* v. *Broom.* [2]

Regarding inadequate consideration, with respect to the learned judge, I am unable to agree with his opinion. Section 26 *Explanation 2* states:—

"An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given."

And *Illustration* (*f*) reads:—

"A. agrees to sell a horse worth $1,000 for $10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration."

Pollock and Mulla on Indian Contract and Specific Relief Acts (8th Edition) at page 222 states:—

"In a suit (*The Administrator-General of Bengal* v. *Juggeswar Roy* (1877) 3 Cal. 192, 196) to set aside a conveyance on the ground of inadequacy of consideration the Privy Council observed: 'The question then reduces itself to whether there was such an inadequacy of price as to be a sufficient ground of itself to set aside the deed. And upon that subject it may be as well to read a passage from the case of *Tennent* v. *Tennents* (L.R. 2 H.L. Sc. 6) in which Lord Westbury very shortly and clearly stated the law upon this subject. He says:—'The transaction having clearly been a real one, it is impugned

by the appellant on the ground that he parted with valuable property for a most inadequate consideration. My Lords, it is true that there is an equity which may be founded upon gross inadequacy of consideration. But it can only be where the inadequacy is such as to involve the consideration that the party either did not understand what he was about or was the victim of some imposition.' Their Lordships are unable to come to the conclusion that the evidence of inadequacy of price is such as to lead them to the conclusion that the plaintiff did not know what he was about or was the victim of some imposition.'"

In *Kedari Bin Ranu* v. *Atmarambhat* [3] Westropp C.J. said:—

"Mere inadequacy of consideration, it is true, unless it be so great as to amount to evidence of fraud, is not sufficient ground for setting aside a contract, or refusing to decree a specific performance of it. Inadequacy of consideration, when found in conjunction with any other such circumstances as suppression of the value of property, misrepresentation, fraud, surprise, oppression, urgent necessity for money, weakness of understanding, or even ignorance, is an ingredient which weighs powerfully with a Court of Equity in considering whether it should set aside contracts, or refuse to decree specific performance of them."

Mr. Yeap himself admitted that if there was consideration then inadequacy of consideration is immaterial.

Section 25 of the Indian Contract Act is identical with section 26 of our Contracts Ordinance. Here there was no evidence of duress or fraud.

In the circumstances I would allow the appeal with costs. The cross-appeal by the respondent is dismissed.

The order of the learned judge is set aside. There will be judgment for the appellant in terms of the counterclaim with costs.

Thomson L.P. and **Tan Ah Tah F.J.** concurred.

Appeal allowed.

Solicitors: *Dharmananda & Co.*; *Yeap & Yeap.*

TANG SIEW HEE & ORS. v. HII SII UNG

[O.C.J. (McGilligan J.) December 7, 1963]

[Sibu — Civil Suit No. 68 of 1963]

Bill of exchange — Claim on promissory note — Promissory note executed because of hwei transactions — Want or failure of consideration — Nature of hwei — Method of operation.

Evidence — Oral evidence to vary written document — Evidence Ordinance, (Sarawak Cap. 54), ss. 93 and 94.

Gaming — Gambling contract — Hwei — Nature and method of operation.

The plaintiffs claimed the sum of $3,356 on a promissory note signed by the defendant which alleged a loan to the defendant by the plaintiffs. Oral evidence was given that the sum represented amounts due from him as the head of a *hwei* which he ran in 1962 and that the defendant had in fact never received the loans from the plaintiffs.

Held: (1) the oral evidence was admissible under the proviso to section 94 of the Evidence Ordinance to show that there was a want or failure of consideration;

(2) as such evidence showed that the consideration shown in the promissory note and alleged by the plaintiffs was non-existent, the plaintiff's claim must fail.

Nature and method of operation of *hwei* explained.

CIVIL SUIT.

Plaintiffs in person.

C. T. Wong for the defendant.

Cur. Adv. Vult.

McGilligan J.: The plaintiffs' claim is an apparently simple one for "judgment in the sum of $3,356 being money lent to the defendant at his request". It is based on what is called a promissory note, dated 12th November 1960, which was (undisputedly) signed by the defendant. In their plaint, or statement of claim, the plaintiffs put their case in the following way:—

"1. On or about 12th November, 1962, the plaintiffs lent and advanced to the defendant at his request a sum of $3,356 (dollars three thousand three hundred and fifty six only) which sum the defendant promised to repay without demand on or before 12th May, 1963.

2. On the same day the defendant executed one promissory note in favour of the plaintiffs. Such transaction was made in the presence of Headman Wong Kie Sieng.

3. Despite repeated demands made by the plaintiffs against the defendant for the payment of the said sum, the defendant refused and still refuses to pay the same."

The document on which the plaintiffs rely is written in Chinese characters. The English translation of it reads —

"Promissory Note is hereby made by HII SII UNG (I/C No. 222100) who has borrowed from Tang Siew Hee, Wong Liong Nung, Lau Yong Ping and Tiong Chuo Kiew the sum of Dollars three thousand three hundred and fifty six only (without interest). The repayment period falls on 12th day of May, next year. Sii Ung agrees to deposit, as security, the two titles of his own rubber gardens O.T. No. 20346 and O.T. No. 12263 totalling six acres. Should the repayment is not made on the expiration of the term specified there is no objection for the lenders to apply to court for auction of the said land in settlement of the said loan. Words of mouth show no proof and therefore Promissory Note is herewith prepared for reference.

Borrower: (Sgd.) Hii Sii Ung

Witness: (Sgd.) Wong Kie Sieng
(Stamped with the Seal of Headman Area No. 6 Wong Kie Sieng)

Written by: (Sgd.) Wong Kwong Hui."

This translation (Exhibit 2) was accepted by both parties as correct, except in one point, on which the court heard evidence from the court interpreter. It appears that in the Chinese original the word "DEN" is written after the names of the four plaintiffs. According to the interpreter, as I understood his evidence, "DEN"